Filed 5/23/14 Massoud v. Corinthian Colleges CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CAROL MASSOUD, Plaintiff and Appellant, v. CORINTHIAN COLLEGES, INC., Defendant and Respondent.	B242958 (Los Angeles County Super. Ct. No. BC448524)

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles Palmer, Judge. Affirmed.

Mancini & Associates, Marcus A. Mancini and Timothy J. Gonzales, and Benedon & Serlin, Douglas G. Benedon and Gerald M. Serlin for Plaintiff and Appellant.

Payne & Fears, Jeffrey K. Brown, Erik M. Andersen and Rachel Warren, for Defendant and Respondent.

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Carol Massoud ("appellant") appeals from a judgment on a jury verdict in favor of her former employer Corinthian Colleges, Inc. ("respondent") on a complaint for age discrimination and retaliation in violation of the Fair Employment and Housing Act (Gov. Code,[1] § 12900 et seq. ("FEHA")). Appellant claims the trial court committed prejudicial error by rejecting three proposed special instructions on respondent's motivating reason for terminating her employment. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Employment, Termination and Complaint

Respondent operates approximately 120 vocational trade schools throughout the United States including Everest College in Reseda, California. The Reseda campus offers training in five programs: medical assistant, medical administrative assistant, dental assistant, pharmacy technician, and medical insurance billing code. To become eligible to graduate, a student must receive classroom training in his or her respective field and then complete 160 hours as an extern. Appellant worked at the Reseda Campus as a Senior Externship Coordinator. Appellant was terminated on September 15, 2009, after a student advised appellant's supervisors that appellant told the student to falsify an externship timesheet.

Appellant filed an age discrimination complaint against respondent and other defendants on November 1, 2010. Although the complaint alleged several causes of action, only the age discrimination and retaliation claims against respondent for violations of FEHA were tried to a jury verdict.[2]

The Trial Evidence

In 2000, when appellant was 50 years old, she began working at the Reseda campus as an admissions representative. Appellant subsequently transferred to the

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[1] All further statutory references are to the Government Code unless otherwise indicated.

[2] The trial court summarily adjudicated some of causes of action as to some defendants. Before trial, appellant dismissed all the other defendants and causes of action.

Placement Department where she worked for about a year until she was promoted to the position of Externship Coordinator.

During the initial phase of her employment with respondent, appellant received promotions and commendations. Appellant was named employee of the year in 2005. She received a commendation in 2006 from the president of the Reseda Campus, Lani Townsend, for transforming the team from "good" to "great." Townsend commended appellant for being dependable with students and employers. Townsend wrote at one point that the campus "rocked" because of appellant.

Appellant left respondent's employment for about three months in 2007 but was rehired by Townsend as a Senior Externship Coordinator in the same year. In order for Townsend to rehire appellant, Townsend had to obtain an exception to respondent's policy against rehiring past employees who quit their jobs. Appellant was 57 years old when Townsend rehired her.

A Senior Externship Coordinator is responsible for obtaining externship positions for the students. A coordinator also ensures the records are accurate and reflect that the students completed 160 externship hours within 90 days of completing the classroom portion of their program. Once the student completes the 160 externship hours, the coordinator is responsible for processing the paperwork necessary for the student to officially graduate. Townsend and appellant's immediate supervisor, Susan Carroll, testified that a coordinator should not process the graduation paperwork until the students have completed the 160 externship hours.

Both sides agreed that, when appellant returned to work for respondent, the position had become more demanding because of the economic recession. The coordinators had more pressure to make telephone calls to employers to take on the campus's students as externs. During this period of time, Townsend began giving appellant poor performance evaluations. Townsend testified that appellant failed to pursue potential employers and create new opportunities for externs. Appellant also received a Corrective Action Notice for failing to place a student on an externship within 14 days as required by respondent's policy. The student was dropped from the program

and lost her financial aid package. Appellant submitted a written response to the notice the day after receiving it. Appellant's performance evaluations noted that she needed to improve her efforts to ensure compliance with governmental and accreditation policies. Appellant was also warned that her files were incomplete and missing documents. Appellant submitted a written response to the evaluation.

In early 2009, respondent promoted another extern coordinator, Veronica Sepulveda, to the position of Career Services Manager. Sepulveda was 44 years old when she received the promotion. According to Townsend, Sepulveda was promoted because she was actively improving the department. In addition, Sepulveda approached Townsend and asked for a raise based on Sepulveda's initiative. The position and title were created to recognize her efforts. Appellant testified that she was not given an opportunity to apply for the newly created position. Appellant's theory at trial was that she was not considered for the promotion because Townsend said she was concerned about appellant's health. Appellant testified that she did not have any health problems in 2009. Townsend denied stating appellant's health had anything to do with Sepulveda's promotion. Rather, according to Townsend, appellant never expressed any interest in being promoted after she was rehired in 2007.

Also in 2009, Carroll, who was 25 years old, was hired as the director of Career Services. Carroll was responsible for supervising all the employees of the Career Services Department. According to appellant, Townsend introduced Carroll as a bubbly and energetic person. Appellant testified that Carroll began treating her differently than the younger employees, who were in there twenties and thirties. She showed a preference for the younger employees, who were often in Carroll's office behind a closed door laughing and joking. Appellant was excluded from these private meetings on a regular basis. Appellant and one other former employee, Laurie Collins, testified that Carroll treated appellant differently from other employees. Carroll had an attitude of superiority and aloofness with appellant. She reportedly refused to acknowledge or outright rejected appellant's recommendations to improve the department, even though they would have

been helpful. Carroll testified that appellant's recommendations were not implemented because respondent already had a recordkeeping policy in place.

In May 2009, Carroll transferred all of appellant's medical insurance billing code files to two newly hired externship coordinators, who were 34 and 37 years old. In the summer of 2009, appellant obtained an externship position for Elizabeth Palma at the Reseda Medical Center. Palma was in the medial insurance billing code program. Appellant obtained the position for Palma after being instructed to do so by Sepulveda even though appellant was no longer in charge of the medical insurance billing code externship files.

On September 4, 2009, Palma's file was on appellant's desk. Appellant testified that she was surprised the file was on her desk because Palma's file had been transferred in May 2009 to other coordinators. After examining the file, appellant discovered that Palma, who was scheduled to graduate shortly, was 24 hours short of the 160 externship hours. According to appellant, she told Sepulveda about the shortage and then immediately called Palma explaining that she did not have enough externship hours to graduate. Appellant arranged for Palma to complete her hours at Reseda Medical Clinic. Appellant faxed Palma her time sheet for the period of August 6 to August 31, 2009 and a new time sheet for her to complete after working the additional 24 hours. On September 8, 2009, appellant faxed the time sheets to Palma again after Palma indicated she had not received the original fax.

Appellant testified that Palma insisted that appellant had miscalculated the hours. Appellant instructed her to add the hours up herself and get back to appellant with any questions. However, Palma did not call back with any questions. Palma completed the 24 hours she needed to graduate on September 8, 9, and 10, 2009.

On September 11, 2009, Palma called respondent's offices and asked to speak to appellant. Carroll took the telephone call because appellant was not in the office. Palma said she was calling about her externship timesheets. Carroll thought this was strange because she had already printed out Palma's diploma and transcript and graduated Palma out of the system on August 31, 2009. Carroll had done all these things based on

information input by appellant into respondent's computer tracking system, which showed Palma had completed all of her requirements, including 160 externship hours. The information to have Palma graduated out of the system should not have been given to the business offices until Palma completed all the requirements.

After speaking to Palma on the telephone, Carroll asked her to come into the office to discuss the matter. Palma spoke with Carroll and then with Townsend. She showed them a timesheet for the period August 6 through August 31, 2009. The timesheet showed the number of hours on the dates August 24, 25, 26, 27 and 28, 2009 had been changed from "4" to "8." Palma informed Carroll and Townsend that appellant had faxed copies of the timesheets to her and told her to change the "4's" to "8's" for that week. Palma inquired whether appellant was sure about changing the hours. Appellant told Palma not to worry so Palma changed the timesheet. Palma provided a written statement in which she indicated that appellant told her to falsify the timesheet. Townsend reviewed Palma's timesheets and concluded that she had been short 24 hours to graduate as of August 31, 2009. As of September 10, 2009, Palma had completed the 160 hours needed to graduate.

When appellant returned to work on September 14, 2009, she was called into a meeting with Carroll and Townsend. Conflicting testimony was offered as to what occurred during this meeting. Appellant testified that she denied telling Palma to change the timesheet. Carroll and Townsend testified that when presented with Palma's letter appellant said, "I screwed up." According to appellant, she actually said, "yeah, it looks like I screwed up." At the conclusion of the meeting, Townsend placed appellant on suspension and told appellant that she could call Townsend with any further information. Appellant did not call or contact Townsend or Carroll to further explain or deny the claim.

Townsend sent an e-mail to respondent's regional vice-president, John Andrews, and regional human resources director, Lynn Westerfield. The e-mail described what had occurred in the meetings with Palma and appellant. Townsend recommended termination. Although respondent has a progressive discipline policy, Townsend did not

recommend any discipline short of termination. Townsend did not recommend that Palma be disciplined because she had already graduated and was only following appellant's instructions.

Andrews and Westerfield, who were both 54 years old, agreed that termination was warranted given Palma's written statement and appellant's failure to deny the allegation that she had instructed a student to falsify a timesheet. Andrews testified that asking a student to falsify records is "educational murder."

Townsend called appellant on September 15, 2009, to tell her that she was terminated. Appellant did not deny that she had told Palma to falsify the timesheet. Townsend testified that age was not a consideration in her decision to recommend termination of appellant's employment. Carroll testified that she did not have the authority to terminate appellant; and that she would not have done anything differently if appellant was younger.

Appellant never complained to anyone about age discrimination. Appellant testified that she never complained to anyone at the job that she was being mistreated because of her age. She testified that she felt like a "fuddy-duddy" or a "relic"; however, no one referred to her as a fuddy-duddy or relic. Appellant did make an anonymous complaint on respondent's hotline in early 2009 because some of the employees were speaking in Spanish. Townsend and Westerfield investigated and handled the complaint. One employee wrote a letter to appellant and apologized.

The Jury Instructions

Appellant submitted ten proposed special instructions on how to prove motivating reason. The appeal challenges the trial court's refusal to instruct on three of the proposed instructions. Appellant's proposed special instruction No. 1 stated: "'How to Prove 'Motivating Reason': [Appellant] may show that her age was a motivating reason for termination through proof that [respondent's] explanation for termination is illogical or unworthy of credence. In appropriate circumstances, you can reasonably infer from the falsity of the explanation that [respondent] is dissembling to cover up a discriminatory purpose."

Appellant's proposed special instruction No. 3 provided: "If [appellant] proves [respondent] treated similarly situated younger employees more favorably than [appellant], such evidence can be used to prove that [appellant's] age was a 'motivating reason' for her termination."

Appellant's proposed special instruction No. 4 provided: "If [appellant] proves [respondent] failed to follow policies applicable to [appellant], such evidence can be used to prove that [appellant's] age was a 'motivating reason' for her termination."

In declining to give the proposed special instructions, the trial court noted that appellant had "basically taken every case that has talked about motivating reason or things that might show discriminatory conduct and given them to us." The trial court indicated that instructing the jury in the manner requested by appellant would require "instruction on every conceivable offense and every conceivable defense." Rather, the jury would be instructed on what a motivating reason is and counsel could argue the facts in that context.

The trial court instructed the jury on "motivating reason" with CACI No. 2507 as follows: "A 'motivating reason' is a reason that contributed to the decision to take certain action, even though other reasons also may have contributed to the decision." The trial court also instructed the jury with CACI Nos. 2505 and 2570 on elements necessary to prove the retaliation and discrimination claims. The trial court drafted an instruction to deal with appellant's "cat's paw" theory that respondent was liable even though the ultimate decision makers may not have been motivated by retaliatory animus. (See *Reeves v. Safeway Stores, Inc.* (2004) 121 Cal.App.4th 95, 113-116.) And, the trial court instructed the jury on circumstantial evidence CACI No. 202.

Appellant's counsel argued that the evidence supported the proposed special instruction theories on how to prove motivating reason. Counsel argued: "Motivating reason. A motivating reason is a reason that contributed to the decision to take certain action, even though other reasons also may have contributed to the decision, i.e., you're lazy, you're late. This is not [appellant]; this is just an example. You make all kind of mistakes. You're short on your category. That does not necessarily mean you win. It

means that you decide that, you, as the jury, you are empowered to decide whether or not the motivating reason in this case was age discrimination. [¶] [Appellant] made a mistake, grad'g out Elizabeth Palma. We'll get to her in a little bit. But if you find that that was motivated by age, by the preponderance of the evidence, that verdict is for her. [¶] Doesn't have to be that much. It has to preponderate. That's all. And I'm going to tell you a little bit more about how it is that you can find that certain conduct in this case was a motivating reason. We don't have any statements in this case, correct, where the defendant has said, '[Appellant], you're too old, you're fired.' We don't have that in this case. That's a fact. And so some people might say, 'Hey, well, there's no direct evidence of that, therefore, I can't prove that.' [¶] You've heard Your Honor give you an example of the plane flying across the sky. And if somebody testifies, 'I saw a trail of smoke,' then the evidence can infer that a plane traveled across the sky. [¶] So how do we know here that there's age discrimination? There are a number of ways that you can show that the conduct in this case was a motivating reason. No. 1 shifting reasons. One of the reasons that I read you, in open court, that interrogatory response… tells us what the reason was for her termination. It was instructing somebody to falsify information, except you heard a little bit differently here in this courtroom. You heard it all the way from opening argument . . . all of a sudden [appellant] has performance problems." Counsel argued that because respondent shifted its reason, it's suspect and evidence of discrimination.

Appellant's counsel further argued that false reasons for termination could support a motivating reason. Counsel stated: "False reasons. False reasons for termination. If you find the reason is false, you believe it is false that's one way to show that conduct, the illegal conduct, the age discrimination, was a motivating reason in this case."

Appellant's counsel also argued that treatment by respondent was an additional way showing motivating reason. Counsel argued: "Treatment by [respondent] to [appellant]. That's one way-if you believe the evidence is there, that's one way that you're able to prove that the discriminatory reason is a motivating reason in the adverse employment action. [¶] How was her treatment? Well, you heard from Ms. Laurie

Collins. . . . . [¶] She told you the way Susan Carroll treated [appellant]. And that treatment, in and of itself evidences the way she might feel about [appellant's] age." Appellant's counsel then pointed out that, at age 59, appellant was the oldest person in the department and that other employees in the department were in their twenties or thirties. Counsel then argued: "And that was one of those ways to prove a motivating reason is when you have that kind of disparity in age. . . . One way is if they kept substantially younger employees."

Appellant's counsel argued that the motivating reason could be proved by a failure to properly investigate. Counsel argued: "Failure to properly investigate. That's another way that you can show that age discrimination was behind this, because they didn't; they failed to properly investigate what occurred here." Counsel further argued: "It was a big rush to judgment. I don't think there was any investigation. We hear about the three days . . . that elapsed between September 11 and September 14, 2009, as being time that Ms. Carroll and Ms. Townsend had to discuss and investigate what was going to happen to [appellant] or what the facts were regarding this. [¶] I'd submit to you that somebody that's there for nine years deserves better. . . . [¶] Speed, haste in the decision. I think we talked about that here. I think they just ran to this decision. Why did they run to that decision? Because Ms. Carroll really didn't like [appellant]. That's a fact. At least that's what the evidence bears out in my mind."

In response to statements made by appellant's counsel in argument, respondent's counsel argued that what opposing counsel thinks happened concerning the motivating reason was only opinion and not evidence.

The jury returned a 11-to-one verdict in favor of respondent on the age discrimination claim. The jury specifically found that appellant's age was not a motivating reason for her termination. The jury returned a 12-to-zero verdict in favor of respondent finding that appellant never complained about age discrimination to support the retaliation claim. The trial court entered judgment in favor of respondent on May 31, 2012. On June 15, 2012, appellant filed a new trial motion in which she argued, among other things, the failure to give the proposed special instructions deprived her of a fair

trial. The trial court denied the new trial motion finding appellant did not show any error or prejudice. This timely appeal followed.

DISCUSSION

I. Age Discrimination Standards

Section 12940, subdivision (a) prohibits employers from taking adverse action toward an employee because of his or her age. California has adopted the three-prong burden-shifting test articulated by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, for trying age discrimination claims. (*Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 354-357 (*Guz*).) In such a case, plaintiff has the initial burden to establish a prima facie case of discrimination. (*Guz, supra,* 24 Cal.4th at pp. 354-355.) To prevail on the age discrimination claim under the FEHA, appellant's prima facie case required proof: she was a member of a protected class; she was qualified for and performing competently in the position; she suffered an adverse employment action; and some other circumstances which suggests a discriminatory motive. (*Guz, supra,* at p. 355; *Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 321.) The other circumstance requirement may be met with evidence supporting an inference that the employee was discharged for a discriminatory purpose. (*Mixon v. Fair Employment & Housing Com.* (1987) 192 Cal.App.3d 1306, 1318.)

Once the prima facie case is established, the burden shifts for an employer to offer a legitimate reason unrelated to the prohibited bias, which if true, would preclude a discrimination finding. (*Guz, supra,* 24 Cal.4th at p. 358.) An objective sound reason supports the credibility of a decision, however, "the ultimate issue" in the age discrimination case is whether the employer acted with an illegal discriminatory motive. (*Ibid*.) If the employer sustains its burden, the plaintiff then has "the opportunity to attack the proffered reasons as pretexts for discrimination, or to offer any other evidence of discriminatory motive." (*Guz, supra,* at p. 356.)

Our Supreme Court recently held in a case tried on the theory that the adverse employment action was based on a mixed motive, a FEHA plaintiff is required to show that discrimination was a "substantial motivating factor" for the decision. (*Harris v. City*

of Santa Monica (2013) 56 Cal.4th 203, 232 (*Harris*).) However, "mere discriminatory thoughts or stray remarks are not sufficient to establish liability under the FEHA." (*Harris, supra,* 56 Cal.4th at p. 225.)

II. Jury Instruction Standards

Appellant claims she was prejudiced when the trial court erroneously refused to give three proposed special instructions which would have assisted her in proving that respondent's motivating reason in terminating her was discrimination.[3] The three proposed special instructions were directed to respondent: credence; preferential treatment of younger employees, and failure to follow policies.

"A party is entitled upon request to correct, nonargumentative instructions on every theory of the cased advanced by him which is supported by substantial evidence." (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572 (*Soule*).) However, "'Instructions should state rules of law in general terms and should not be calculated to amount to an argument to the jury in the guise of a statement of law. [Citations.] Moreover, it is error to give, and proper to refuse, instructions that unduly overemphasize issues, theories or defenses either by repetition or singling them out or making them unduly prominent although the instruction may be a legal proposition. [Citations.]' [Citation.] Finally, '[e]rror cannot be predicated on the trial court's refusal to give a requested instruction if the subject matter is substantially covered by the instructions given. [Citations.]' [Citations.]" (*Red Mountain, LLC v. Fallbrook Public Utility Dist.* (2006) 143 Cal.App.4th 333, 359-360 (*Red Mountain*).)

We note that, even if there was instructional error, "there is no rule of automatic reversal or 'inherent' prejudice applicable to any category of civil instructional error, whether of commission or omission. A judgment may not be reversed for instructional error in a civil case 'unless, after an examination of the entire cause, including the

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3 Appellant has not made any claims concerning the retaliation cause of action in this appeal. So any issue regarding the retaliation is deemed abandoned. (*Murray Co. v. Occupational Safety & Health Appeals Bd.* (2009) 180 Cal.App.4th 43, 54, fn. 5; *Tan v. California Fed. Sav. & Loan Assn.* (1983) 140 Cal.App.3d 800, 811.)

evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.' (Cal. Const., art. VI, § 13.)" (*Soule, supra,* 8 Cal.4th at p. 580.)

III. Rejected Proposed Special Instructions

Appellant's special instruction No. 1 stated: "'How to Prove 'Motivating Reason': [Appellant] may show that her age was a motivating reason for termination through proof that [respondent's] explanation for termination is illogical or unworthy of credence. In appropriate circumstances, you can reasonably infer from the falsity of the explanation that [respondent] is dissembling to cover up a discriminatory purpose."

Citing *Reeves v. Sanderson Plumbing Products, Inc.* (2000) 530 U.S. 133, 147-148 and *Guz, supra,* 24 Cal.4th 317, 361, appellant claims the special instruction was proper because evidence an employer's explanation is not worthy of credence is circumstantial evidence of intentional discrimination. Respondent counters that the proposed instruction is erroneous, misleading and incomplete. Even if the instruction contained a correct statement of law, the trial court properly rejected it on the ground it overemphasized appellant's theory that respondent's explanation for terminating her was false. (*Red Mountain, supra,* 143 Cal.App.4th at p. 359; *Fibreboard Paper Products Corp.* v. *East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 718.) And, the trial court could properly refuse this proposed special instruction on motivating reason because the subject matter was covered by CACI No. 2507 explaining motivating reason and CACI No. 202 defining circumstantial evidence.

Appellant's proposed special instruction No. 3 provided: "If [appellant] proves [respondent] treated similarly situated younger employees more favorably than [appellant], such evidence can be used to prove that [appellant's] age was a 'motivating reason' for her termination." Again, the proposed special instruction overemphasizes one of appellant's theories of the case i.e. that Carroll treated younger employers more

favorably than she treated appellant. Moreover, the proposed special instruction amounted to argument under the guise of making a statement of law; and, the motivating reason was covered by the trial court's other instructions. The trial court, thus, correctly rejected the proposed special instruction. (*Red Mountain, supra*, 143 Cal.App.4th at pp. 359-360.)

Appellant's proposed special instruction No. 4 provided: "If [appellant] proves [respondent] failed to follow policies applicable to [respondent], such evidence can be used to prove that [appellant's] age was a 'motivating reason for her termination." Assuming this is a correct statement of the law, the record does not show that the evidence established respondent had a policy that was not followed with respect to appellant. Rather, the record shows that appellant raised some issues as to whether there was a progressive disciplinary policy in place. She also produced evidence which suggested that the decision makers may have rushed to judgment without an adequate investigation. Thus, even though the failure to follow policy theory was not completely developed, the proposed special instruction would have overemphasized appellant's theory that the policy was not followed. As such, the proposed instruction was either incomplete or would have misled the jury.

IV. Prejudice

In any event, assuming there was error, appellant is required to show that there is a reasonable probability that she would have obtained a different outcome if the jury had been instructed with the proposed special instructions. (*Soule, supra*, 8 Cal.4th at pp. 580-581 & fn. 11.) In determining whether instructional error was prejudicial, we consider "(1) the state of the evidence, (2) the effect of other instructions, (3) the effect of counsel's arguments, and (4) any indications by the jury itself that it was misled." (*Id.* at pp. 580-581.) After examining the entire cause, we are unable to conclude that there was any prejudicial error in this case.

The evidence showed that appellant was initially hired by respondent when she was 50 years old. Appellant briefly left her employment with respondent in early 2007. She was rehired in November 2007 when she was 57 years old. In 2009, respondent hired Carroll, who was 25 years old. Appellant and a former co-worker testified that Carroll treated appellant differently than other employees, all of whom were apparently younger than appellant. Carroll purportedly spoke with a "superior" tone to appellant and rejected her ideas. However, appellant admitted that no one ever made any age based statements to her. She never complained to anyone that age discriminatory conduct was directed against her. However, appellant did complain when some of her co-workers began speaking Spanish in the office. Appellant also claimed that Townsend promoted Sepulveda, who was younger than appellant. Townsend testified that she promoted Sepulveda after she exercised some initiative and requested a promotion. Appellant admitted that she never asked for a promotion when she returned to work for respondent in 2007. Appellant claimed that when she asked why Sepulveda was given the promotion she was told Townsend was concerned about appellant's health. However, appellant's theory of discriminatory conduct was not predicated upon a medical condition. Thus, there was no evidence that Townsend did not promote appellant because of appellant's age.

Respondent presented evidence that appellant was terminated because she instructed a student to falsify a timesheet. The record shows that appellant's position as an extern coordinator required her to keep records and input information into respondent's system for the students assigned to her. Students were required to complete a classroom component and then 160 externship hours to graduate. The extern coordinator would then give the information to respondent's business office so that the student would be graduated out of the system. Appellant submitted records to

respondent's business office which showed that Palma had completed 160 externship hours as of August 31, 2009. In fact, Palma had only completed 136 externship hours as of that date.

On September 4, 2009, appellant contacted Palma and told her she had to work 24 additional hours to complete her educational program. On September 11, 2009, Palma called the office and asked to speak to appellant, who was not in. Instead, Palma spoke to Carroll inquiring about her timesheets. Carroll was puzzled because she had printed out Palma's diploma based on information submitted by appellant that Palma completed the 160 externship hours as of August 31, 2009. When Palma came into the office, Carroll and Townsend learned that Palma had worked 24 additional hours on September 8, 9, and 10, 2010. Palma also advised Carroll and Townsend that she had altered her August 24 to August 28 timesheets to reflect that she had worked 8 rather than 4 hours on each date based on appellant's instructions. Palma gave a written statement describing appellant's instructions to alter the timesheets. When confronted with the written statement, appellant stated that it "looked" as though she had "screwed up." Appellant did not offer any explanation as to why the timesheets had been altered prior to her termination. Respondent terminated appellant on the basis of Palma's written statement and evidence that appellant did not deny instructing Palma to do so. Thus, the evidence shows a basis for terminating appellant for instructing a student to falsify a timesheet.

Furthermore, the trial court instructed the jury on motivating reason as defined in CACI No. 2507 and on circumstantial evidence defined in CACI No. 202. Appellant's counsel argued at length that the facts supported each of the proposed special instruction theories on how to prove motivating reason. There was no indication that the jury was misled by the trial court's instructions. Under the circumstances, we cannot conclude that the jury would have reached a more favorable result if the jury had been instructed with the proposed special instructions.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J. *

FERNS

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.